No. 84-9

In the Supreme Court
OF THE
United States

October Term, 1984

Massachusetts Mutual Life Insurance Company, and Cecilia Stevenson,
Petitioners,

vs.

Doris Russell,
Respondent.

MOTION OF BOARDS OF TRUSTEES OF THE NORTHERN CALIFORNIA CARPENTERS TRUST FUNDS, CEMENT MASONS TRUST FUNDS, LABORERS TRUST FUNDS, OPERATING ENGINEERS TRUST FUNDS AND CONSTRUCTION TEAMSTERS HEALTH AND WELFARE TRUST FUND FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICI CURIAE

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QUESTIONS PRESENTED

Whether, under the Employee Retirement Income Security Act, a fiduciary of an employee benefit plan may be held personally liable to a plan participant or beneficiary for punitive damages or extra-contractual compensatory relief for improper or untimely processing of a benefit claim.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Board of Trustees of the Carpenters Health and Welfare Trust Fund for California, the Carpenters Pension Trust Fund for Northern California, the Carpenters Vacation and Holiday Trust Fund for Northern California, the Carpenters Annuity Trust Fund for Northern California, the 46 Counties Millwrights Annuity Trust Fund, the Cement Masons Health and Welfare Trust Fund for Northern

California, the Cement Masons Pension Trust Fund for Northern California, the Cement Masons Vacation/Holiday Trust Fund for Northern California, the Cement Masons Apprenticeship and Training Trust Fund for Northern California, the Laborers Health and Welfare Trust Fund for Northern California, the Laborers Pension Trust Fund for Northern California, the Laborers Vacation-Holiday Trust Fund for Northern California, the Laborers Training and Retraining Trust Fund for Northern California, the Operating Engineers Health and Welfare Trust Fund, the Pension Trust Fund for Operating Engineers, the Pensioned Operating Engineers Health and Welfare Trust Fund, the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeyman Affirmative Action Training Fund and the Construction Teamsters Health and Welfare Trust Fund for Northern California (the "Northern California Trust Funds") hereby move the Court pursuant to Supreme Court Rule 36.1 for leave to file the accompanying brief as Amici Curiae in Support of the Petition for a Writ of Certiorari filed on July 3, 1984, in U.S.S.C. 84-9.

In support of this motion, the Boards of Trustees of the Northern California Trust Funds state as follows:

1. Petitioners Massachusetts Mutual Life Insurance Company and Cecilia Stevenson have consented to the filing of the accompanying brief and a letter evidencing such consent will be filed with the Clerk of the Court. Respondent Doris Russell has refused to consent to such filing.

2. The Northern California Trust Funds are collectively-bargained multiemployer employee benefit funds

established and maintained pursuant to Section 302 (c)(5) and (6) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186(c), (5), (6). Each of the Funds is an employee benefit plan covered by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq., commonly known as ERISA.

3. The Funds, in the aggregate, have over ninety thousand participants, who are employees, engaged in the building and construction industry in the 46 Northern Counties of California, and over five thousand contributing employers, who are also engaged in that industry.

4. Each of the Funds is governed by a Board of Trustees composed of an equal number of employer representatives and employee representatives, each of whom serves without compensation from the Funds. The members of each Board have been designated as named fiduciaries who jointly have authority to control and manage the operation and administration of the employee benefit plan maintained by the Fund. One of the duties of the Board in the exercise of this authority is to receive and consider claims to benefits under the plan and to grant or deny such claims.

5. For the reasons given in the accompanying brief the Boards of Trustees of the Funds believe that the holding of the Court of Appeals in *Massachusetts Mutual Life Insurance Company v. Russell* that the fiduciary of an ERISA plan may be held personally liable to a plan participant for punitive damages or extra-contractual compensatory relief for the untimely or

improper processing of his benefit claim will (a) discourage responsible and qualified individuals from becoming or remaining plan trustees, (b) lead to the granting of unmerited benefit claims to the detriment of plan participants and beneficiaries generally and (c) promote the litigation of claims and increase the cost of such litigation. They believe, further, that such holding evidences a lack of understanding of the manner in which multiemployer employee benefit plans operate and is unrealistic; that the holding is unfair, not only to the trustees but also to the participants and beneficiaries of such plans; and that the holding conflicts with both the express terms of ERISA and with important objectives of Congress in enacting that Act.

6. The holding in the *Russell* case has had an immediate adverse impact upon the Funds and the adverse effects of the holding are ongoing. One of the Funds, the Laborers Pension Trust Fund for Northern California, is currently defending an action by a disappointed claimant in which the members of its Board of Trustees have been included as defendants, and in which punitive damages are sought, and threats of actions for punitive damages are routinely made against others of the Funds by attorneys representing participants in claim review proceedings. The Boards of Trustees have concluded, therefore, that the interests of the Funds and their participants and beneficiaries, and the Boards' fiduciary obligations to protect and serve those interests, require that these concerns be brought to the attention of the Court at the first opportunity.

For the foregoing reasons, the Boards of Trustees of the Funds respectfully request that they be granted leave to file the accompanying brief as Amici Curiae.

Dated: August 1, 1984

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NATURE OF THE INTEREST OF THE NORTHERN CALIFORNIA FUNDS IN THE PETITION

Because of the special characteristics of multiemployer employee benefit plans in the construction industry, the holding of the Court of Appeals in this case that a fiduciary of a plan may be held personally liable to a plan participant for punitive damages or extra-contractual compensatory relief for the improper or untimely processing of his claim has a particularly devastating impact upon such a plan. The

trustees of the plan who serve as employer representatives do so more out of dedication to the industry than out of their self-interest or the special interests of their employers. The contractors and builders who participate in the plan number in the thousands, and the easy course for a contributing employer would be to let someone else undertake the burdens and responsibilities of representing the employers on the boards of trustees.

Ever since the first of the Northern California Funds were established in 1953 the employer associations that negotiate and renegotiate the collective bargaining agreements providing for the Funds have, as a general policy, appointed leading contractors or builders, or the principal officers of leading contractor or builder firms, as employer trustees of the Funds. This policy has meant that those who, through their leadership positions, have been familiar with the interests and positions of the contributing employers, including those relating to collective bargaining, have been truly representative of such employers within the meaning of Section 302(c)(5) of the Labor-Management Relations Act. The policy has contributed substantially to the growth and well-being of the Funds, which now receive annually more than $350,000,000 in employer contributions, distribute more than $320,000,000 in benefits to participants and their dependents and beneficiaries and have accumulated more than $1,700,000,000 in reserves for future pension and other benefits. The policy, however, has become increasingly difficult to maintain because of the reluctance of potential appointees to expose themselves and their families to the risk of personal liability.

While the trustees can be provided with insurance against personal liability for extra-contractual compensatory re-

lief, no insurance can be provided in California against liability for punitive damages. Further, and of more immediate concern to every trustee, is that a simple allegation and claim for punitive damages has been held by the federal courts to authorize an inquiry for discovery purposes into the net worth and personal finances of a defendant.

In *Hughes v. Groves* (W.D. Mo. 1969) 47 F.R.D. 52, the Court said (p. 55):

> "Defendant next objects to plaintiff Róbert Hughes' interrogatory 7 and Margaret Hughes' interrogatory 18, both of which in substance ask for "all assets and liabilities, jointly and severally * * * and gross earnings for last five (5) years." Defendant objects that the question is premature. *He asserts that 'more than a simple allegation and claim for punitive damages should be necessary to allow plaintiffs to discover information about defendant's finances and 'how much he is to be punished.'" The law, however, is well settled and contrary to that position.* Information regarding damages is as discoverable as is that which pertains to liability. 4 Moore's Federal Practice § 26.18, p. 1229 (1968 ed.); *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 289 U.S. 689, 53 S.Ct. 736, 77 L.Ed. 1449. *No prima facie showing in p[illegible]ive damages is required to justify discovery.*"[1]

See: *Miller v. Doctor's General Hospital* (W.D. Okla. 1977) 76 F.R.D. 136, 140; *Holliman v. Redman Development Corp.* (D.S.C. 1973) 61 F.R.D. 488, 491; *Coy v. Superior Court* (1962) 58 Cal.2d 210, 216-217, 23 Cal. Rptr. 393, 373 P.2d 457.

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[1]Emphasis is added throughout this brief unless otherwise noted.

Some of the adverse consequences of the ruling in *Hughes v. Graves, supra*, were expressed in *Richards v. Superior Court* (1978) 86 Cal.App.3d 265, 150 Cal. Rptr. 77, where Court said (p. 271):

> "Discovery seeking financial information by reason of a claim for punitive damages is one classic instance of the manner in which civil discovery is used to achieve a litigation advantage never contemplated when the methodology was introduced into pretrial procedure. *Causes of action for punitive damages have become very easy to allege.* (See, e.g., *Neal v. Farmers Insurance Exchange* (1978) 21 Cal.3d 910, 148 Cal. Rptr. 389, 582 P.2d 980.) Response to discovery seeking financial information places a severe burden on the responder. As a minimum, there is the time and expense necessary to the compilation of a complex mass of information unrelated to the substantive claim involved in the lawsuit and relevant only to the subject matter of a measure of damages which may never be awarded. In addition, there is usually the potential that untoward disclosure of the information obtained may in some way or other react adversely against the disclosing party for reasons totally unrelated to the lawsuit. The possibilities run all the way from greater exposure to the not so gentle solicitations of some charitable organizations *to the possibility of damage to the discloser in the competitive business arena.*"

See: Note, *Pretrial Discovery of Net Worth in Punitive Damage Cases* (1981) 54 So. Cal. L. Rev. 1141.

If, as the Court of Appeals held in this case, the improper or untimely processing of a claim for benefits could expose a fiduciary of an ERISA plan to personal liability for punitive damages, the denial of such a claim could *a fortiori* expose the fiduciary to such liability. ERISA

requires that the boards of trustees of the Northern California Funds assume responsibility for the granting or denial of claims to benefits from the Funds, and at practically every meeting of the boards of the Pension Funds and the Health and Welfare Funds particularly, the boards must decide appeals from the administrative denial of claims. ERISA also requires that the decisions on these appeals be solely in the interests of the participants and beneficiaries of the plans and in accordance with the documents and instruments governing the plans insofar as the documents and instruments are consistent with ERISA (ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1)).

The claims that have been denied have already been carefully screened administratively under these guidelines so that inevitably many of the appeals must be rejected. An individual trustee who has been required to participate in these difficult decisions and who knows that any disappointed claimant may file an action against him personally in a federal district court and by a simple allegation and claim for punitive damages obtain the right to inquire into his personal financial affairs could not be blamed if he resigned from his trusteeship, and a potential trustee could not be blamed for declining to serve under such unrealistic and unjust legal rules.

The interest of the Northern California Funds in the petition for a writ of certiorari in this case is to reverse these unrealistic and unjust legal rules as soon as possible and thereby preserve, for the benefit of the participants and beneficiaries, Funds which have been built up to their present importance over a period of more than 30 years, which

have been well run for all of that period, and which Congress did not intend to cripple or destroy when it enacted ERISA.

SUMMARY OF ARGUMENT

The holding that a plan participant may sue the fiduciary of the plan for punitive damages because of the improper or untimely processing of his benefit claim was based on an uncritical and erroneous reading of the legislative history of ERISA. When that history is correctly read it compels the conclusion that Congress intended to limit the civil enforcement remedies provided by ERISA to the more flexible and less draconic remedies developed by courts of equity.

This conclusion is confirmed by the fact that Congress provided in ERISA for a claims review procedure and made plan fiduciaries primarily responsible for establishing and operating the procedure. Congress must have intended to protect the fiduciaries from harassment or intimidation in connection with the exercise of this responsibility. Further, the procedure was intended to provide an expeditious and relatively inexpensive method of resolving benefit disputes. Both of these objectives would be defeated by the complication, delay, expense, harassment and risk connected with the assertion and litigation of claims for punitive damages.

ARGUMENT

Congress Did Not Intend by the Enactment of ERISA to Subject a Fiduciary of a Covered Employee Benefit Plan to an Action for Punitive Damages by a Plan Participant Who Alleges that the Fiduciary Has Processed His Claim in an

Improper or Untimely Manner or Has Arbitrarily and Capriciously Denied His Claim for Benefits.

The Court of Appeals, in ruling that a plan participant may sue the fiduciary of the plan for punitive damages because of the alleged improper or untimely processing of his claim, relied upon statements in Congressional committee reports that the committees intended to provide both the Secretary of Labor and plan participants and beneficiaries with "the full range of legal and equitable remedies available in both state and federal courts" (722 F.2d 491). The last version of the bill which ultimately became ERISA to contain language supporting these sweeping statements, however, was H.R. 2 as passed by the Senate on March 4, 1974, which provided in Section 693 that "[c]ivil actions for appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation, or duty of a fiduciary . . . may be brought by any participant or beneficiary of any employee benefit plan or fund subject to the Welfare and Pension Plans Disclosure Act in any court of competent jurisdiction, State or Federal, . . . (Legislative History of the Employee Retirement Income Security Act of 1974, Public Law 93-406, prepared by the Sub-Committee on Labor of the Committee on Labor and Public Welfare, United States Senate, April, 1976, Vol. III, pp. 3599, 3816-3817).[2]

The sweeping language of Section 693 was drastically changed in ERISA as finally enacted. The only action that ERISA permits to be brought in a State court is an action by a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights

[2]Hereafter referred to as "Legis. Hist."

under the terms of the plan, or to clarify his right to future benefits under the terms of the plan" (Section 502(a)(1)(B)). All other actions must be brought in the federal courts and actions by a participant or beneficiary or the Secretary of Labor to redress violations of the Act are expressly limited to actions to obtain injunctive "or other appropriate *equitable* relief" (Sections 502(a)(3) and (a)(5)).

The provisions of Section 502(a)(3) and (a)(5) make it impossible, we submit, to distill from the provisions of Section 502(a)(2) an intention on the part of Congress to provide to the Secretary and participants and beneficiaries the "full range of legal and equitable remedies available in both state and federal courts" which Section 693 of H.R. 2 would have provided. The only possible conclusion from the terms of the Act as passed is the one drawn by petitioners, namely, that Congress deliberately intended to limit the civil enforcement remedies provided by the Act to the more flexible and less draconic remedies developed by courts of equity (Petition, pages 11-12).

This conclusion is confirmed by the legislative history of ERISA. As noted by petitioners (Petition, p. 16), ERISA § 503, 29 U.S.C. § 1133, and regulations issued pursuant to that Section, require that a plan establish a reasonable claims procedure which provides for a full, fair and prompt review by the plan fiduciary of a decision denying a claim. The genesis of this provision was explained in the Conference Report on H.R. 2, Rep. No. 93-1280, 93d Cong., 2d Sess., at p. 328 (Legis. Hist., p. 4595) as follows:

> "*Benefit Claim Procedure.*—The bill as passed by the House contains no provisions providing for procedures

for resolving disputes between the plan administrator and participants or beneficiaries. Under the bill as passed by the Senate each pension plan is required to establish a procedure for a review of disputes between the plan administrator and participants or beneficiaries and afford an opportunity for arbitration of any dispute. Under the conference agreement every employee benefit plan is required to provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for denial written in a manner calculated to be understood by the participant. In addition, the plan administrator is required to afford a reasonable opportunity to any participant or beneficiary whose claim for benefits has been denied for a full and fair review of this decision by the plan administrator."

The purpose of the provision, and the reason for its final form, were explained by Senator Javits as follows (Legis. Hist., p. 4769):

"The Senate bill provided that each plan was to incorporate a procedure for arbitration of benefit claim disputes between the plan and participants and beneficiaries. The House bill contained no comparable provision. *House conferees were opposed to the Senate provision on grounds it might be too costly to plans and a stimulant to frivolous benefit disputes, and at their insistence it was dropped in conference.* I regret this decision since I believe the Senate bill would have provided a relatively inexpensive way for the resolution of minor benefit disputes for the many participants and beneficiaries who lack the resources to pursue their claims through the courts. Nevertheless, I am encouraged that the conferees agreed to direct the Joint Pension Task Force to study the feasibility of this approach, and *by the acceptance of provisions*

contained in the original Williams-Javits bill that would require a full and fair claims procedure—Section 503—as well as the provisions authorizing the Secretary of Labor to enforce benefits denied in violation of law—Section 502(b)."

In the light of this legislative history the Courts have construed Section 503 as requiring that a plan participant or beneficiary whose claim to benefits has been denied exhaust the plan's claims review procedure before resorting to the courts (*Amato v. Bernard* (9th C.A. 1980) 618 F.2d 559; *Challenger v. Local Union No. 1 of the International Bridge, Structural and Ornamental Ironworkers* (7th C.A. 1980) 619 F.2d 645; *Taylor v. Bakery & Confectionary Union & Industry International Welfare Fund* (E.D.N.C. 1978) 455 F. Supp. 816, 820).

In *Taylor* the Court said (455 F. Supp. at pp. 819-820):

"An examination of the underlying ERISA policies, interpreted analogously to the development of federal law under LMRA § 301, leads the court to conclude that Congress intended a claimant to exhaust his interfund remedies before seeking federal court review (with two exceptions noted infra). First, Section 1133 of the Act specifically requires the establishment of claims procedures, and the Secretary of Labor, pursuant to 29 U.S.C. § 1135, has promulgated extensive guidelines to implement these procedures. *Much like the labor grievance system, this claim/appeals mechanism is designed to reduce frivolous claims, promote the consistent treatment of claims, and create a non-adversarial method of claims settlement.* CF. Vaca v. Sipes, 386 U.S. 171, 191, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).

Tied to these inter-fund claims procedures was Congress' awareness of the potential costs of pension reform, and *it sought to 'strike a balance between providing meaningful reform and keeping costs within reasonable limits.'* [1974] U.S. Code Cong. & Admin. News, pp. 4670, 4682. Congress was particularly concerned with outlining a private insurance system that would operate efficiently, thereby increasing its acceptance and institution among American business. U. S. Code News, supra. If claimants were allowed to litigate the validity of their claims before a final trustee decision was rendered, the costs of dispute settlement would increase markedly for employers. Employees would also suffer financially because, rather than utilize a simple procedure which allows them to deal directly with their employer, they would have to employ an attorney and bear the costs of adversary litigation in the courts.

Finally, the broad managerial discretion granted trustees under the ERISA statutory provisions indicates *a Congressional intent that they be primarily responsible for establishing and operating the claims procedures.* See Hines v. Anchor Motor Freight, Inc. 424 U.S. 554, 562-64, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976) (LMRA § 301, grievance procedure contest)."

Congress, having made plan fiduciaries primarily responsible for establishing and operating the claims procedures, must certainly have intended to protect those fiduciaries from harassment or intimidation in connection with the exercise of that responsibility. This Court has not hesitated to recognize and enforce such protection for decision-

makers in comparable contexts and for comparable reasons (see *Butz v. Economu,* 438 U.S. 478, 511, 93 S.Ct. 2894, 2913 (1978); *Briscoe v. Lahue,* U.S. , 103 S.Ct. 1108, 1120 (1983)). The reasoning of these cases supports the position of petitioners (Petition p. 15) that Congress could not have intended to impose personal liability for punitive damages upon plan fiduciaries for action taken in the operation of the claims procedure, since the threat of such liability disrupts the reasoned decision making which Congress considered essential to ERISA. Protection from the threat of personal liability, and the harassment connected with suits to enforce such liability, promotes the interest of all plan participants and beneficiaries in the uniform and impartial application by plan fiduciaries of the terms of the plan, while the right of an individual participant or beneficiary to sue for enforcement of his rights under the plan (ERISA § 502(a)(1)(B)) and to seek the assistance of the Secretary of Labor in enforcing participation, vesting and funding rights (ERISA § 502(b)), provides ample protection against abuse of the decision-making function in individual cases (*Cf. Nixon v. Fitzgerald,* U.S. , 102 S.Ct. 2690, 2706 (1983)).

Further, the holding that fiduciaries may be held personally liable for punitive damages, even under the limited circumstances the *Russell* Court deemed "appropriate", inevitably complicates the court review of the decisions of plan fiduciaries and increases the time and expense of such review, thereby defeating one of the other important objectives of the claim review procedures. In order to prevail in an action to secure court review of the decision of a plan fiduciary denying a claim to benefits, the plaintiff must

allege and prove that the decision was arbitrary, capricious, made in bad faith, not supported by substantial evidence, or erroneous on a question of law (*Rehmar v. Smith* (9th CA 1976) 555 F.2d 1362, 1371; *Music v. Western Conference of Teamsters Pension Trust Fund* (9th CA 1983) 712 F.2d 413, 418). By naming the fiduciary as a defendant individually and including in his complaint a prayer for punitive damages and an allegation that the fiduciary also acted "with actual malice or wanton indifference to [his] rights", plaintiff can pursue not only the merits of his claim for benefits but also discovery as to the personal financial resources of the fiduciary and the issue as to whether or not the fiduciary should be punished for having denied his claim. Thus, a process which was intended by Congress to provide an expeditious and relatively inexpensive method of resolving benefit disputes would be converted into costly, drawn-out, highly adversarial litigation which would include issues unrelated to the merits of the plaintiff's claim to plan benefits. We submit that both the terms of ERISA and the legislative history of the Act make clear that Congress did not intend such a result, and that this Court should act promptly to review and reverse the decision of the Court of Appeals.

CONCLUSION

Unless this Court grants certiorari, the holding in *Russell* will become the law governing the administration of ERISA plans within the vast area of the Ninth Circuit. These plans are already beset with major problems—enforcement of withdrawal liability, hospital and medical cost containment, affirmative action, etc.—which require the attention, abilities and judgment of responsible leaders in the respective industries served by the plans. The addition to these problems of the intimidation and harassment inherent in the punitive damage remedy threatens to deprive the plans of the services of the fiduciaries who are best able to resolve the problems, and defeats the objective of ERISA to promote the growth and prosperity of covered plans. This Court should act now to issue a writ of certiorari to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

San Francisco, California
August 1, 1984

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